

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT
SYSTEMS ANTITRUST LITIGATION

This Document Relates To:

Authenticom, Inc. v. CDK Global, LLC, et al.,
Case No. 1:18-cv-00868 (N.D. Ill.)

*Motor Vehicle Software Corp. v. CDK Global,
LLC, et al.*, Case No. 1:18-cv-00865 (N.D. Ill.)

MDL No. 2817
Case No. 18-cv-00864

Hon. Robert M. Dow, Jr.
Magistrate Judge Jeffrey T. Gilbert

FILED UNDER SEAL

**DECLARATION OF MICHAEL N. NEMELKA IN SUPPORT OF PLAINTIFFS
AUTHENTICOM'S AND MVSC'S MOTION FOR SANCTIONS AGAINST
DEFENDANT THE REYNOLDS AND REYNOLDS COMPANY**

I, Michael N. Nemelka, pursuant to 28 U.S.C. § 1746, declare as follows. I am a partner with the law firm of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C. in Washington, D.C. I respectfully submit this declaration in support of Plaintiffs Authenticom's and MVSC's Motion for Sanctions Against Defendant The Reynolds and Reynolds Company for the intentional destruction of evidence. All of the documents attached to this Declaration and identified below (Exhibits 1 – 29), are true and correct copies of the identified documents and have been designated, as appropriate, under the Second Amended Agreed Confidentiality Order in this case (Dkt. 650).

1. Attached as **Exhibit 1** is a true and correct copy of the Indictment of Robert T. Brockman, *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. Oct. 1, 2020), Dkt. 1.
2. Attached as **Exhibit 2** is a true and correct copy of The Reynolds and Reynolds Company Corrected Second Supplemental Response to the CID issued by the FTC on June 21, 2017.

3. Attached as **Exhibit 3** is a true and correct copy of The Reynolds and Reynolds Company Supplemental Response to the CID issued by the FTC on June 21, 2017

4. Attached as **Exhibit 4** is a true and correct copy of excerpts from the transcript of the January 16, 2019 deposition of Robert Brockman in this litigation.

5. Attached as **Exhibit 5** is a true and correct copy of Exhibit A to Robert F. Smith Non-Prosecution Agreement – Statement of Facts, dated October 9, 2020.

6. Attached as **Exhibit 6** true and correct copy of excerpts from the transcript of the January 25, 2019 deposition of Ronald Lamb in this litigation.

7. Attached as **Exhibit 7** is a true and correct copy of Exhibit 26 to the United States' Response to Defendant's Motion for a Competency Hearing in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 15, 2020), Dkt. 69-26.

8. Attached as **Exhibit 8** is a true and correct copy of Exhibit 8 (part 2) to the United States' Motion for Discovery Order Under Rule 17(C) and 45 CFR 164.512(e)(1)(i) in *United States v. Brockman*, No. 4:21-cr-00009 (S.D. Tex. filed Jan. 26, 2021), Dkt. 26-9.

9. Attached as **Exhibit 9** is a true and correct copy of excerpts from the transcript of the April 17, 2019 deposition of Robert Schaefer in this litigation.

10. Attached as **Exhibit 10** is a true and correct copy of Exhibit 25 to the United States' Response to Defendant's Motion for a Competency Hearing in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 15, 2020), Dkt. 69-25.

11. Attached as **Exhibit 11** is a true and correct copy of an October 26, 2018 letter from B. Ross to D. Dorris.

12. Attached as **Exhibit 12** is a true and correct copy of a November 16, 2018 letter from B. Ross to D. Dorris.

13. Attached as **Exhibit 13** is a true and correct copy of excerpts from the transcript of the April 18, 2019 deposition of Robert Schaefer in this litigation

14. Attached as **Exhibit 14** is a true and correct copy of the Affidavit in Support of the Application for a Warrant To Seize Property Subject to Forfeiture, in 1:20-mc-00183 (D. Colo. Oct. 22, 2020), Dkt. 1.

15. Attached as **Exhibit 15** is a true and correct copy of United States' Opposition to Defendant's Motion To Dismiss, in Part, and To Transfer Venue in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 7, 2020), Dkt. 63.

16. Attached as **Exhibit 16** is a true and correct copy of Exhibit 2 to the United States' Response to Defendant's Motion for a Competency Hearing in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 15, 2020), Dkt. 69-2.

17. Attached as **Exhibit 17** is a true and correct copy of Exhibit 3 to the United States' Response to Defendant's Motion for a Competency Hearing in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 15, 2020), Dkt. 69-3.

18. Attached as **Exhibit 18** is a true and correct copy of Exhibit 6 to the United States' Response to Defendant's Motion for a Competency Hearing in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 15, 2020), Dkt. 69-6.

19. Attached as **Exhibit 19** is a true and correct copy of an October 14, 2020 letter from D. Dorris to B. Ross in this litigation.

20. Attached as **Exhibit 20** is a true and correct copy of an October 26, 2020 letter from D. Dorris to B. Ross in this litigation.

21. Attached as **Exhibit 21** is a true and correct copy of November 10, 2020 letter from D. Dorris to B. Ross in this litigation.

22. Attached as **Exhibit 22** is a true and correct copy of November 13, 2020 letter from B. Ross to D. Dorris in this litigation.
23. Attached as **Exhibit 23** is a true and correct copy of November 13, 2020 letter from B. Ross to D. Dorris in this litigation.
24. Attached as **Exhibit 24** is a true and correct copy of Exhibit 5 to the United States' Response to Defendant's Motion for a Competency Hearing in *United States v. Brockman*, No. 3:20-cr-00371 (N.D. Cal. filed Dec. 15, 2020), Dkt. 69-5.
25. Attached as **Exhibit 25** is a true and correct copy of an October 27, 2020 letter from B. Ross to D. Dorris.
26. Attached as **Exhibit 26** is a true and correct copy of a April 14, 2015 letter from S. Cottrell to R. Schaefer with beginning Bates number REYMDL00042749 in this litigation
27. Attached as **Exhibit 27** is a true and correct copy of an April 29, 2015 email chain with beginning Bates number REYMDL00237395 in this litigation.
28. Attached as **Exhibit 28** is a true and correct copy of correspondence from 2016 with beginning Bates number REYMDL00025374 in this litigation.
29. Attached as **Exhibit 29** is a true and correct copy of a June 30, 2016 letter from J. Emmanual to D. Brown with beginning Bates number REYMDL00052088 in this litigation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: February 8, 2021

/s/ Michael N. Nemelka
Michael N. Nemelka